

REMARKS

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

Regarding the Claim Objection of Claim 31

Applicant has amended claim 31 to depend from claim 1. Reconsideration and allowance of this claims is respectfully requested.

Regarding the Rejections under 35 U.S.C. §102

With regard to claim 38, Applicant respectfully submits that the 102(e) rejection over Douglas is improper and should be withdrawn. In order for a 102 rejection to be proper each and every element of the claim, as is contained in the claim and arranged as recited in the claim, must be anticipated by the cited reference. MPEP 2131 provides as follows:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). >"When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02.< "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection. See MPEP § 2131.01.

Contrary to the examiner's statement that all elements are disclosed in the Douglas reference, at least the first and second gain control elements in parallel with first and second microphones element of claim 38 is not; the rejection is unsupported by the art and should be withdrawn. The

examiner makes an argument equating an acoustic barrier in Douglas with the gain control element of claim 38. This, however, is not supported by the Douglas reference. Paragraph 37 of Douglas states as follows:

[0037] The acoustical materials 7, 8 of the earcups 3, 4 shown in FIGS. 1 and 2 preferably surrounds the output transducer (not shown) and the microphone (not shown) and acts as an acoustic barrier or filter between the transducer and microphone in each earcup to decrease the open loop gain by placing an acoustical impediment in the path of the microphone and the output transducer. The acoustical materials 7, 8 of the headset 1 form an enclosure which fits respectively around each ear of the wearer to isolate the desired original inputted audio signal (from the independent electronic sound device) from the noise detected and canceled by the pickup microphone located in each earcup.

It can be seen that with respect to the acoustic barrier formed by acoustical materials 7, 8 there is no teaching in the Douglas reference that the acoustic barrier is in parallel to first and second microphones. Indeed, the reference described the acoustic barrier as being in the path, and therefore acoustically in series with, not parallel to, the microphone and output transducer of the reference. This is in contrast to the language of the claim.

For the foregoing reasons, Applicant respectfully submits that the 102(e) rejection over Douglas is improper and should be withdrawn. Reconsideration and allowance of claim 38 is respectfully requested. No new amendment should compel a new grounds for rejection.

Regarding the Rejections under 35 U.S.C. §103

With regard to claims 1 and 2, Applicant respectfully traverses this basis of rejection in light of the clarifying amendment to claim 1. The claimed invention of claim 1 recites "...a current source element coupled in series to the first microphone to provide a correct bias voltage to said first microphone...." It is clear from this recitation that the current source is operable to supply a bias voltage to the microphone in order to be able to power it.

Murata, relied upon the show this aspect of the claimed invention because Douglas does not, is, conversely, a passive current device in that it can only take power from the power source that both it and the microphone are connected to. It cannot itself supply power to the microphone. Constant current circuit 26 is accordingly coupled in parallel to the microphone unit 27. Column 4, lines 5-22, for instance, describes that current circuit 26 has an infinite internal impedance, so that the load impedance of microphone unit 27 doesn't change even as control switch 25 closes. This causes the output level of the microphone unit 27 to remain constant.

Applicant has added the words "in series" to clarify that the current source element itself can provide the correct bias voltage to the microphone. This is meant to clarify implicit meaning of the claim as filed, since, as discussed above, the current circuit of Murata cannot provide power to the microphone as it is connected in parallel with the microphone.

In light of the foregoing reasons, Applicant respectfully submits that the 103(a) rejections of claims 1 and 2, claims 3-12, and claims 35-37 have been overcome. It is noted that claims 2, 3-12 and 35-37 depend from claim 1. Moreover, with respect to claims 3-12, it is noted that the Mosely reference does not teach or anticipate a current source element coupled to a microphone to provide a correct bias voltage to it and thus fails to cure the defect of the Murata reference discussed above. Similarly, with respect to claims 35-37, the Maruyama reference also fails to teach or anticipate a current source element coupled to a microphone to provide a correct bias voltage to it and thus fails to cure the defect of the Murata reference discussed above.

Reconsideration and allowance of claims 1-2, 3-12 and 35-37 are respectfully requested at the Examiner's earliest convenience.

Allowable Subject Matter

Applicant notes with appreciation that claims 19, 20, 40 and 41 are allowed over the art of record. Claims 13, 14, 16-18, 26-29, 31-34 and 42 are objected to as being dependent upon a rejected base claims, but would be allowable if rewritten in independent form. It is noted that these claims depend from claim 1. Because it is believed that the 103 rejection of claim 1 has been

overcome, Applicant respectfully declines to rewrite these allowable claims in independent form at this time, but does reserve the right to do so in the future if so desired.

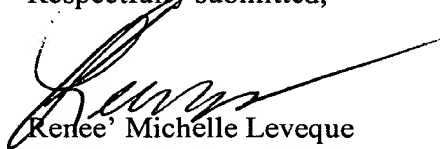
Concluding Remarks

The undersigned additionally notes that other distinctions exist between the cited art and the claims. However, in view of the clear distinctions pointed out above, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned respectfully requests the courtesy of an interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,



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